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ATTORNEYS FOR A-D ACQUISITION HOLDINGS, LLC  
and APPALOOSA MANAGEMENT L.P.

UNITED STATES BANKRUPTCY COURT  
SOUTHERN DISTRICT OF NEW YORK

In re

DELPHI CORPORATION, et al.,

Debtors.

Chapter 11  
Case No. 05-44481 (RDD)  
(Jointly Administered)

**SUPPLEMENTAL LIMITED OBJECTION AND RESERVATION OF RIGHTS OF  
APPALOOSA MANAGEMENT L.P. AND A-D ACQUISITION HOLDINGS, LLC  
WITH RESPECT TO THE DEBTORS' PLAN MODIFICATION APPROVAL  
MOTION, RELATED DOCUMENTS AND NOTICE OF SUCCESSFUL BIDDER AT  
AUCTION**

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Defendants Appaloosa Management L.P. (“AMLP”) and A-D Acquisition Holdings, LLC (“ADAH” and, together with AMLP, “Appaloosa”) respectfully submit this supplemental limited objection and reservation of rights (the “Supplemental Limited Objection”) with respect to the Motion for Order (I) Approving Modifications to Debtors’ First Amended Plan of Reorganization (as Modified) and Related Disclosures and Voting Procedures and (II) Setting Final Hearing Date to Consider Modifications to Confirmed First Amended Plan of Reorganization (the “Plan Modification Approval Motion”) (Docket No. 14310), as supplemented on June 1, 2009 (Docket No. 16646), the First Amended Joint Plan of Reorganization of Delphi Corporation and Certain Affiliates, Debtors and Debtors-in-Possession (as Modified) (the “Modified Plan”) (Docket No. 17030) and the Supplement to First Amended Disclosure Statement with Respect to First Amended Joint Plan of Reorganization of Delphi Corporation and Certain Affiliates, Debtors and Debtors-in-Possession (as Modified) (Docket No. 17031), both dated June 16, 2009; the exhibits to the Modified Plan, filed on July 2, 2009 (Docket No. 17557); and the Notice of Successful Bidder at Auction (Docket No. 18658) and the Debtors’ Omnibus Reply in Support of Modified Plan and Master Disposition Agreement (“Delphi Modified Reply”) (Docket No. 18659), both filed on July 27, 2009.

### **PRELIMINARY STATEMENT**

1. Appaloosa raises this Supplemental Limited Objection for the primary purpose of ensuring that its rights, defenses and positions in pending litigation with Delphi are not prejudiced by consummation of the Modified Plan or the Alternate 363 Sale. Specifically, Appaloosa raises concerns based on the limited information it has been provided, the restrictions concerning the way in which the information has been provided, and the limited time it has had to digest such information. Further, to assure no prejudice, Appaloosa requests that (i) no findings of fact be made with respect to the facts at issue in the Adversary Proceeding (defined

below); and (ii) its limited objection, dated July 16, 2009 (the “Limited Objection”) (Docket No. 18345), be deemed timely.

### **STATEMENT OF FACTS**

2. On October 8, 2005, Delphi Corporation (“Delphi”) and certain of its subsidiaries and affiliates (together, the “Debtors”) commenced cases under Chapter 11 of the United States Bankruptcy Code in the United States Bankruptcy Court for the Southern District of New York, which are being jointly administered.

3. ADAH, certain other plan investors (together with ADAH, the “Plan Investors”), and Delphi subsequently entered into the Equity Purchase and Commitment Agreement, dated as of August 3, 2007, as amended as of December 10, 2007 (the “EPCA”).

4. The Court approved Delphi’s entry into the EPCA in an order dated December 10, 2007. (Docket No. 11382)

5. In connection with Delphi’s pending suit against Appaloosa and others (the “Adversary Proceeding”), ADAH has asserted claims against Delphi in its answer and counterclaims (the “Counterclaims”) (see Adv. Proceeding No. 08-01232, Docket No. 105, hereby incorporated by reference). Pursuant to the EPCA and DIP orders in these cases (see, e.g., Docket No. 13489), the transaction fees requested by ADAH as part of the Counterclaims are allowed, contingent, superpriority administrative expenses of Delphi which are senior to the claims of the DIP lenders. The remainder of the Counterclaims are contingent administrative claims.

**ARGUMENT**

**I.**

**FINDINGS OF FACT CONCERNING THE ADVERSARY PROCEEDING SHOULD  
NOT BE MADE IN CONNECTION WITH PLAN MODIFICATION**

6. In support of plan modification, Delphi and its witnesses have made a number of factual assertions that are the subject of dispute in the Adversary Proceeding. For example, in its Modified Reply, Delphi claims as follows:

In the months following the Court's entry of the Confirmation Order, the Debtors satisfied all of the conditions under the Investment Agreement and the Confirmed Plan, including conditions concerning \$6.1 billion in exit financing and the rights offering. . . . The Plan Investors did not, however, participate in the closing, and instead refused to comply with their funding obligations under the Investment Agreement.

(Delphi Modified Reply at 5-6; see also, e.g., id. at 28, 92; Declaration of John D. Sheehan in Support of Modifications to Debtors' First Amended Joint Plan of Reorganization in Respect of MDA, Modified Plan, and Pure Credit Bid, executed on July 19, 2009, at ¶¶ 6, 7, 15, 16, 113; Declaration of Robert S. Miller, Jr. in Support of Modifications to Debtors' First Amended Joint Plan of Reorganization, executed on July 20, 2009, ¶¶ 27, 28, 29)

7. Such factual assertions are contradicted by the factual record in the Adversary Proceeding, incompetent and, for present purposes, unnecessary to the issues relevant for Debtors' plan modification motion.

8. As such, Appaloosa requests that no factual findings be made with respect to the facts at issue in the Adversary Proceeding and that any factual findings or conclusions of law made not have binding effect or otherwise be admitted in the Adversary Proceeding. Appaloosa further requests that the following language be added to any modified confirmation order:

No statement contained in any of Delphi's declarations or testimony offered in support of plan confirmation shall be used for

purposes of supporting or establishing any fact in Adversary Proceeding Nos. 08-01232 and 08-01233 (the “Adversary Proceeding”) and no finding made by the Court in support of plan confirmation shall be final, binding or conclusive, or be given any weight, for purposes of the Adversary Proceeding. Nothing in this Order shall prejudice or waive the rights of any Plan Investor to raise or assert any claim, defense or position in the Adversary Proceeding.

## II.

### **DELPHI HAS DENIED APPALOOSA AN OPPORTUNITY TO EVALUATE PROPERLY THE MODIFIED PLAN**

9. Delphi has failed to permit Appaloosa to participate in discovery or to permit it to meaningfully evaluate the Modified Plan. Both orally and in writing, Appaloosa repeatedly requested access to discovery. On July 7, 2009, Appaloosa requested that Delphi “please keep us informed of all discovery concerning plan confirmation so that we may participate.” On July 21, Appaloosa subsequently requested in writing that Delphi “confirm that no plan confirmation discovery has taken place and that none is scheduled.” On July 24, Appaloosa stated that “we reiterate our request that Delphi provide whatever information it has as to the current state of affairs and that it keep the Plan Investors informed of any plan-related discovery, so that the Plan Investors may choose to attend.” Delphi never responded to any such request.

10. After being called by Appaloosa’s counsel, on July 27, 2009, Delphi first informed Appaloosa that discovery had indeed taken place but that Appaloosa would not be given access to transcripts of any depositions that had been taken, despite the fact that Appaloosa and the Plan Investors are parties to protective orders with Delphi. Further, Delphi yesterday provided for the first time the declarations upon which it intends to rely on for confirmation of the modified plan, even though even though each of those seven declarations had been executed on or before July 20, 2009, more than one week ago. Moreover, Delphi, provided such

information on an outside counsel-eyes' only basis, limiting effective review by Appaloosa or the Plan Investors.

11. Finally, Delphi filed more than 500 pages of documents in support of plan modification late last night and called for objections to be made by 5:00 p.m. today, one day in advance of the plan modification hearing.

12. Consequently, Appaloosa reserves all rights based on any failure to permit Appaloosa to participate in or even see relevant discovery or otherwise to adequately review the Modified Plan.

### **III.**

#### **APPALOOSA'S LIMITED OBJECTION WAS TIMELY**

13. In an e-mail dated July 14, 2009 from David Sherbin to Douglas Baumstein copying Christopher Shore, John Sheehan, and Jack Butler (a copy of which is attached hereto as Exhibit A), Delphi extended the Plan Investors' time to object to Thursday, July 16, 2009. Appaloosa timely filed its Limited Objection on July 16, 2009. (Docket No. 18345)

14. In Appendix B to the Delphi Modified Reply, Delphi asserts that the Limited Objection was untimely. Such contention has no merit in light of the extension granted by Delphi. As such, Appaloosa requests that its Limited Objection be deemed timely.

#### **RESERVATION OF RIGHTS**

15. Appaloosa expressly reserves its rights to supplement and amend this Supplemental Limited Objection, seek discovery with respect to same, and introduce evidence at any hearing relating to the Modified Plan and related documents, without in any way limiting any other rights that it may have. Appaloosa also expressly reserves the right to object to confirmation of any plan of reorganization on any grounds, as may be appropriate.

**MEMORANDUM OF LAW**

16. Because the legal points and authorities upon which this Supplemental Limited Objection relies are incorporated herein, Appaloosa respectfully represents that the requirements of Local Rule 9013-1(a) of the Local Bankruptcy Rules of the United States Bankruptcy Court for the Southern District of New York have been satisfied.

**CONCLUSION**

17. For the foregoing reasons, Appaloosa respectfully requests that, absent the requests proposed herein, the Court not approve the Modified Plan and grant such other and further relief as the Court deems just and proper.

Dated: July 28, 2009  
New York, New York

By: /s/ J. Christopher Shore  
WHITE & CASE LLP  
J. Christopher Shore (JCS-6031)  
Douglas P. Baumstein (DB-1948)  
1155 Avenue of the Americas  
New York, New York 10036-2787  
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Thomas E Lauria (Admitted *Pro Hac Vice*)  
Wachovia Financial Center  
200 South Biscayne Boulevard  
Miami, Florida 33131  
(305) 371-2700

Attorneys for AMLP and ADAH

18.

## **Exhibit A**



**Baumstein, Douglas**

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**From:** Baumstein, Douglas  
**Sent:** Tuesday, July 14, 2009 11:20 PM  
**To:** 'david.sherbin@delphi.com'  
**Cc:** Shore, Christopher; 'john.sheehan@delphi.com'; 'jbutler@skadden.com'  
**Subject:** Re: questions

That is fine. I appreciate your courtesy.

-----  
Sent from my BlackBerry Wireless Handheld

----- Original Message -----

From: Sherbin, David <david.sherbin@delphi.com>  
To: Baumstein, Douglas  
Cc: Shore, Christopher; Sheehan, John <john.sheehan@delphi.com>; jbutler@skadden.com  
<jbutler@skadden.com>  
Sent: Tue Jul 14 22:53:42 2009  
Subject: RE: questions

Doug: We'll extend until Thursday and plan to speak in the early afternoon tomorrow, if that's acceptable to you.

DAvid

-----Original Message-----

From: Baumstein, Douglas [mailto:dbaumstein@ny.whitecase.com]  
Sent: Tue 7/14/2009 6:45 PM  
To: Baumstein, Douglas; Sherbin, David  
Cc: Shore, Christopher  
Subject: RE: questions

David,

What time are you available?

Doug

---

From: Baumstein, Douglas  
Sent: Tuesday, July 14, 2009 4:32 PM  
To: 'Sherbin, David'  
Cc: Shore, Christopher  
Subject: RE: questions

David,

I appreciate your time constraints, but we are trying to determine whether we need to object and if so, the scope of such objection. We had requested an extension from tomorrow's deadline of a couple of days so that we could speak with someone and been told that Delphi would not consent. Can you give us an extension until Friday afternoon so we can talk tomorrow?

Best regards,

Douglas P. Baumstein  
White & Case LLP  
1155 Avenue of the Americas  
New York, New York 10036

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From: Sherbin, David [mailto:david.sherbin@delphi.com]  
Sent: Tuesday, July 14, 2009 4:25 PM  
To: Baumstein, Douglas  
Subject: RE: questions

I'm sorry Doug. I cannot tonight. Tomorrow is a much better day for me.

David M. Sherbin  
Vice President, General Counsel  
and Chief Compliance Officer  
Delphi Corporation  
5725 Delphi Drive  
Troy, MI 48098-2819  
Phone: 248-813-3009 / Fax: 248-813-2491  
E-Mail: david.sherbin@delphi.com

---

From: Baumstein, Douglas [mailto:dbaumstein@ny.whitecase.com]  
Sent: Tuesday, July 14, 2009 4:14 PM  
To: Sherbin, David  
Cc: Butler, Jr., John (Jack) Wm; Cochran, Eric L; Hogan III, Albert L; Marafioti, Kayalyn A; Corcoran, Sean P; Friedman, Edward A.; aschilling@fklaw.com; Shore, Christopher  
Subject: RE: questions

Are you or others available for a conference call tonight at 5 or 6?

---

From: Baumstein, Douglas  
Sent: Tuesday, July 14, 2009 3:50 PM  
To: 'Sherbin, David'  
Cc: Butler, Jr., John (Jack) Wm; Cochran, Eric L; Hogan III, Albert L; Marafioti, Kayalyn A; Corcoran, Sean P; Friedman, Edward A.; aschilling@fklaw.com; Shore, Christopher  
Subject: RE: questions

I am sorry, I am not talking about the source of funding, but the use of funds. As I understand it, administrative claims are paid from the trust and DPH Holding will use its proceeds to wind down its operations. Is that correct?

---

From: Sherbin, David [mailto:david.sherbin@delphi.com]  
Sent: Tuesday, July 14, 2009 3:36 PM  
To: Baumstein, Douglas

Cc: Butler, Jr., John (Jack) Wm; Cochran, Eric L; Hogan III, Albert L; Marafioti, Kayalyn  
A; Corcoran, Sean P; Friedman, Edward A.; aschilling@fklaw.com; Shore, Christopher  
Subject: RE: questions

No, as the plan and MDA provide, the funding primarily comes from: GM, the sale of assets  
by DPH Holdings and from the avoidance actions.

David M. Sherbin

Vice President, General Counsel

and Chief Compliance Officer

Delphi Corporation

5725 Delphi Drive

Troy, MI 48098-2819

Phone: 248-813-3009 / Fax: 248-813-2491

E-Mail: david.sherbin@delphi.com

---

From: Baumstein, Douglas [mailto:dbaumstein@ny.whitecase.com]

Sent: Tuesday, July 14, 2009 3:19 PM

To: Sherbin, David

Cc: Butler, Jr., John (Jack) Wm; Cochran, Eric L; Hogan III, Albert L; Marafioti, Kayalyn  
A; Corcoran, Sean P; Friedman, Edward A.; aschilling@fklaw.com; Shore, Christopher

Subject: RE: questions

Do all the provisions to fund administrative claims reside with the trust?

---

From: Sherbin, David [mailto:david.sherbin@delphi.com]

Sent: Tuesday, July 14, 2009 1:14 PM

To: Baumstein, Douglas

Cc: Butler, Jr., John (Jack) Wm; Cochran, Eric L; Hogan III, Albert L; Marafioti, Kayalyn  
A; Corcoran, Sean P; Friedman, Edward A.; aschilling@fklaw.com; Shore, Christopher

Subject: RE: questions

All the claims and assets reside with DPH Holdings Co.

David M. Sherbin

Vice President, General Counsel

and Chief Compliance Officer

Delphi Corporation

5725 Delphi Drive

Troy, MI 48098-2819

Phone: 248-813-3009 / Fax: 248-813-2491

---

From: Baumstein, Douglas [mailto:dbaumstein@ny.whitecase.com]  
Sent: Tuesday, July 14, 2009 12:31 PM  
To: Sherbin, David  
Cc: Butler, Jr., John (Jack) Wm; Cochran, Eric L; Hogan III, Albert L; Marafioti, Kayalyn A; Corcoran, Sean P; Friedman, Edward A.; aschilling@fklaw.com; Shore, Christopher  
Subject: RE: questions

Thank you very much for responding. Do the avoidance claims and other assets reside with DPH Holdings Co or the DPH Holding Share Trust? If they reside at DPH Holding Share Trust, is it Delphi's position that Plan Investor claims would nevertheless reside against DPH Holdings Co.?

---

From: Sherbin, David [mailto:david.sherbin@delphi.com]  
Sent: Tuesday, July 14, 2009 12:18 PM  
To: Baumstein, Douglas  
Cc: Butler, Jr., John (Jack) Wm; Cochran, Eric L; Hogan III, Albert L; Marafioti, Kayalyn A; Corcoran, Sean P; Friedman, Edward A.; aschilling@fklaw.com  
Subject: RE: questions

Doug: Kayalyn forwarded your email to me, so let me try to respond. Our current budget assumes that DPH will have slightly in excess of \$100 million of funding or future revenue. Roughly \$30 million is anticipated to come from the sale of plants, so the timing of receipt and the exact amount of that revenue stream is uncertain. In addition, the avoidance claims, which will be an asset of DPH Holdings could potentially generate a substantial sum, but those too are contingent and impossible to quantify. The costs associated with winding down the 21 facilities are approximately equal to the total funding that DPH Holdings will have available. We have made no provision for any funding to the former plan investors.

Please let me know whether this is responsive to your questions.

Regards, David

David M. Sherbin  
Vice President, General Counsel  
and Chief Compliance Officer  
Delphi Corporation  
5725 Delphi Drive  
Troy, MI 48098-2819  
Phone: 248-813-3009 / Fax: 248-813-2491  
E-Mail: david.sherbin@delphi.com

From: Marafioti, Kayalyn A [mailto:Kayalyn.Marafioti@skadden.com]  
Sent: Tuesday, July 14, 2009 10:38 AM  
To: Sherbin, David; Corcoran, Sean P; 'Friedman, Edward A.'; 'aschilling@fklaw.com'  
Cc: Butler, Jr., John (Jack) Wm; Cochran, Eric L; Hogan III, Albert L  
Subject: FW: Appaloosa questions

See message below.

From: Baumstein, Douglas [mailto:dbaumstein@ny.whitecase.com]  
Sent: Tuesday, July 14, 2009 10:11 AM  
To: Marafioti, Kayalyn A (NYC)  
Cc: Shore, Christopher; Hogan III, Albert L (CHI)  
Subject: RE: Appaloosa questions

Kayalyn,

We have asked you a number of questions and not received answers. I understand you are in court today, so perhaps someone else can answer. Alternatively, from a client management standpoint, we can proceed on a more formal basis, in which circumstances we want to know whether Friday or Monday would be a better day for a deposition. The courtesy of a prompt reply is requested.

Best regards,

Douglas P. Baumstein

White & Case LLP

1155 Avenue of the Americas

New York, New York 10036

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F - (212) 354-8113

---

From: Baumstein, Douglas  
Sent: Monday, July 13, 2009 3:51 PM  
To: 'Marafioti, Kayalyn A'  
Cc: Shore, Christopher; Hogan III, Albert L  
Subject: RE: Appaloosa questions

Kayalyn,

We requested that you advise us of the total amount of Delphi's administrative claims reserve and the breakdown of the expenses covered thereby. What assets will DPH Holdings Co. have to satisfy claims?

Thanks.

Doug

---

From: Marafioti, Kayalyn A [mailto:Kayalyn.Marafioti@skadden.com]  
Sent: Monday, July 13, 2009 3:20 PM  
To: Baumstein, Douglas  
Cc: Shore, Christopher; Hogan III, Albert L  
Subject: Appaloosa questions

Doug,

In answer to your questions, under the MDA, liabilities not otherwise transferred remain with DPH Holdings Co., and, other than as provided in the MDA, there are no provisions for the payment of liabilities. DPH Holdings Co., not DPH Holdings Share Trust, would have liability in respect of any claims by the plan investors. As to plaintiff's management of the plan investor litigation, there is, at present, no documentation beyond section 9.43 of the MDA. GM's post-closing obligation to pay the proceeds of the plan investor litigation to the tranche C lenders is based on the MDA and the plan.

Also, Delphi is not prepared to agree to extend the deadline for the filing of objections by the plan investors.

Regards,

Kayalyn

Kayalyn A. Marafioti  
Skadden, Arps, Slate, Meagher & Flom LLP  
Four Times Square | New York | 10036-6522  
Telephone: 212.735.2350 | Fax: 917.777.2350  
kayalyn.marafioti@skadden.com

Skadden

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